purchased the land and premises known as Lot 104 of Town Subdivision XXIX on September 30, 1969 together with the premises known as No. 215-D Balestier Road erected thereon. They commenced proceedings for possession of the said premises against the Defendant, the Appellant herein. In paragraph 5 of the Statement of Claim they pleaded that "the Plaintiffs are not precluded by the Control of Rent Act, Chapter 266 (the Act) from recovering possession of the said premises, the same not being within the purview of the said Act". In paragraph 7 of the Defence the Defendant claimed that the said premises were within the purview of the Act and claimed protection under it. In his Grounds of Decision, the learned trial judge stated, "The defendant's sole defence at the trial was that he was entitled to protection under the Control of Rent Act, Cap. 226, having occupied the premises prior to September 1947. All other defences pleaded by him in his Defence were abandoned."

The learned trial judge gave judgment for the Plaintiffs for possession of the said premises. Against this judgment the Defendant appealed to the High Court and one of his grounds of appeal was that, "The Learned District Judge was wrong in law and in fact in failing to consider that on the evidence adduced by the Plaintiffs, the Plaintiffs had not discharged the burden of proof, the onus of which was on the Plaintiffs to prove that the premises were not subject to the Control of Rent Act, and deciding the case on the basis that the burden of proving that the premises were within the Control of Rent Act was on the Defendant/Appellant". At the end of the hearing of the appeal I allowed the appeal with costs here and below. The Plaintiffs (Respondents) are now appealing against my judgment.

Now, it is well settled law that in proceedings for possession of premises it is for the Plaintiff (landlord), and not for the Defendant (tenant), to prove that the premises in respect of which possession is being sought is outside the protection of the Act, see *Dadhi Ral Yado* v. *Mukat Rai*[1]. The Plaintiffs in the District Court called three other witnesses beside the 1st Plaintiff himself. The first witness was a clerical officer from the Property Tax Department who said that the premises were first assessed to property tax on January 1, 1958 on an application "for a house number plate for a house near to 215 Balestier Road. The reason given was that his family had great difficulty in applying for water and he intended to apply for separate water supply" (Page 18 of Record of Appeal). The second witness, a senior clerk from the Public Utilities Board, said that "According to records, the water account was operated before May 27, 1958. Electricity was applied for on May 27, 1958. It is a non-domestic commercial account" (Page 19 of Record of Appeal). The third witness, a clerical officer from the National Registration Office, gave evidence that "the identity card No. 0404775/C's holder is Tan Keng Koh (the Defendant-tenant). From records the first address recorded on October 31, 1948 is 256E Changi Road 6¾ m.s. On January 10, 1953 it was changed to 265 Changi Road. On February 7, 1958 it was changed to 215D Balestier Road" (Page 20 of Record of Appeal). The 1st Plaintiff's evidence was "I do not know when 215D Balestier Road was erected" (Page 21 of Record of Appeal). From the evidence of all these four witnesses it seems clear to me that the Plaintiffs had not discharged their burden of proof.

It is quite apparent from a reading of the judgment of the learned trial judge that he approached the whole case as if the burden of proof was on the Defendant and not on the Plaintiffs. His whole judgment deals with the evidence adduced by the Defendant. Nowhere does he say anything about the evidence led by the Plaintiffs in the case before him.

I allowed the appeal for the reason that the learned trial judge had not addressed his mind to the question of the burden of proof in such proceedings being on the Plaintiffs (landlords) and not on the Defendant (tenant).

Appeal allowed.

Solicitors: *B. Mohan Singh & Co.; Ng, Wong & Cheong.*

TEO EE HUP v. SYED HUSSAIN BIN ABDUL RAHMAN ALKAFF

[A.C.J. (Rajah J.) March 10, 1982]
[Singapore – District Court Appeal No. 27 of 1980]

Landlord & Tenant – Claim by landlords for possession – Landlords themselves in breach of provisions of Control of Rent Act – Court's refusal to give redress – Control of Rent Act (Cap. 266), ss. 3, 5 & 15(1)(g).

Landlord & Tenant – Rent-controlled premises – Claim for possession – Mohamedan Calendar and Gregorian Calendar distinguished.

The plaintiffs/respondents sought to recover possession of No. 191 Beach Road, a rent-controlled premises from the first defendant. They argued that he was in breach of a condition of his tenancy not to sublet which he did to four other defendants. Alternatively, the first defendant was collecting rents from his sub-tenants in excess of the permitted margin.

The facts revealed that in Rent Board Application No. 33 of 1974 the rent of the premises was increased from $224.40 to $278.60 per month. This entailed the serving of a Notice to Quit dated December 20, 1973 (the First Notice). The permitted rent increase was according to Gregorian Calendar whereas the rent actually collected by the plaintiffs from the first defendant as from the date of permitted increase was in accordance with the Agreement based on the Mohamedan Year which has one more month than the Gregorian Year.

The plaintiffs, having learnt that the first defendant had sublet parts of the premises, served a Notice to Quit dated July 28, 1977 (the Second Notice) on the first defendant.

The issues before the trial judge were:

(a) whether the four sub-tenants, had already been on the premises before the date of the Agreement, namely, January 29, 1966;
(b) whether there had been any sub-letting subsequent to the Agreement by the first defendant in breach of clause (b) of the Agreement;
(c) whether the total rent collected by the first defendant from the sub-tenants was in excess of the permitted amount; and
(d) whether the Second Notice in all the circumstances of the case was a valid one.

The learned trial judge found, *inter alia*, that there had been a breach of clause (b) of the said Agreement, which would entitle the plaintiffs under the Agreement to terminate the tenancy and re-enter the premises. On issue (d) he found the Second Notice to be a valid one. The first defendant appealed.

Held, allowing the defendant's appeal: (1) it is not permissible for a landlord, who has obtained from the Rent Conciliation Board a fixed monthly increase based on the Gregorian Calendar in respect

of capital expenditure, to latch on the permitted increase to a Mohamedan month. The effect of such an action is that the landlord thereby obtains unlawfully an extra month's increase of rent and is liable to be prosecuted under section 3 read with section 5 of the Control of Rent Act;

(2) in the present case the respondents/plaintiffs, from the effective date of the Order, namely February 1, 1974 were collecting from the appellant the sum of $54.20 unlawfully every year;

(3) the Second Notice was therefore tainted with illegality and could not be availed as a necessary step in the action for possession;

(4) the learned trial judge's judgment for recovery of possession under section 15(1)(b) of the Act could not be supported as there was no declaration or finding as to the court considering it to be reasonable that such order or judgment be made or given as required under section 15(1)(b).

Cases referred to:

(1) *The Happy World Ltd.* v. *Estate & Trust Agencies (1927) Ltd. & Anor.* [1958] M.L.J. 155, 159.

(2) *Ng Chik Puah* v. *Chop Hoe Thong* [1962] M.L.J. 349, 350.

(3) *Koh Chee Chong* v. *Chop Fook On* [1957] M.L.J. 197.

(4) *K.S. Anwari* v. *Lee Ling Neo* [1950] M.L.J. 218, 220-221.

(5) *Cherian Varughese* v. *Aminah Radin Osman* [1958] M.L.J. 221.

DISTRICT COURT APPEAL.

J.B. Jeyaretnam for the appellant/defendant.

Kirpal Singh for the respondents/plaintiffs.

Cur. Adv. Vult.

Rajah J.: In District Court Summons No. 5601 of 1978 the Plaintiffs, as trustees of the 1898 Alkaff Settlement claimed possession of 191 Beach Road (the Premises) as against the 1st Defendant on the ground that he was in breach of a condition of his tenancy not to sublet and as against the other four Defendants on the ground that their occupation as sub-tenants was unlawful for the reason that there was a condition against subletting. Alternatively, the Plaintiffs sought possession against the 1st Defendant under section 15(1)(g) of the Control of Rent Act, Cap. 266 (the Act) that is to say he was collecting rents from his sub-tenants in excess of the permitted maximum. On December 9, 1978, on the return day of the Summons, judgment was entered for the Plaintiffs against the 2nd and 4th Defendants when they failed to appear. At the commencement of the trial on November 26, 1979 the claim against the 3rd and 5th Defendants were withdrawn with the leave of the court, leaving the 1st Defendant as sole defendant at the trial.

It was not in dispute (1) that the Premises were subject to the provisions of the Act (2) that the 1st Defendant was in possession of the Premises under a tenancy agreement, dated January 29, 1966 (Exh. P2 The Agreement), according to Mohamedan calendar at the monthly rent of $224.40 (3) that clause (b) thereof prohibits subletting without the landlord's consent and (4) that in Rent Board Application No. 33 of 1974 the rent of the Premises was increased under the provisions of the Act, which included the serving of a Notice to Quit dated December 20, 1973 (the First Notice) as required under section 7(2) of the Act, from $224.40 to $278.60 per month as from the 1st day of February 1974. It is to be noted that the permitted rent increase was according to the Gregorian Calendar whereas the rent actually collected by the Plaintiffs from the 1st Defendant as from the date of permitted increase was in accordance with the Agreement based on the Mohamedan Year, which, it was agreed by counsel, has one more month than the Gregorian Year. More will be said on this matter later.

The Plaintiffs, having learnt that the 1st Defendant had sublet parts of the Premises, served a Notice to Quit dated July 28, 1977 (the Second Notice) on the 1st Defendant by registered post.

On the evidence led at the trial and the submissions made thereon by counsel for both parties the issues left to the learned trial judge to decide were:

(a) Whether the four sub-tenants, had already been on the Premises before the date of the Agreement, namely, January 29, 1966 (Exh. P2);

(b) Whether there had been any sub-letting subsequent to the Agreement by the 1st Defendant in breach of clause (b) of the Agreement;

(c) Whether the total rent collected by the 1st Defendant from the sub-tenants was in excess of the permitted amount; and

(d) Whether the Second Notice (Exh. P6) in all the circumstances of the case is a valid one. It is to be noted that the Second Notice terminating the tenancy and on which the action for possession was brought relates to a Mohamedan month and not to a Gregorian one. This is confirmed by the Order of Court dated May 21, 1980 (Pages 34 and 35 of Record of Appeal) which orders the Appellant to "pay the Plaintiffs mesne profits at $278.60 per Mohamedan month".

On Issue (a) the finding was that the 2nd, 3rd and 5th Defendants were already on the Premises as sub-tenants before the Agreement. On Issue (b) the finding was that the 4th Defendant only became a sub-tenant of the 1st Defendant sometime in 1970; on this finding the learned trial judge held that there had been a breach of clause (b) of the said Agreement, which breach alone would entitle the Plaintiffs under the Agreement to terminate the tenancy and re-enter the Premises. On Issue (c) he found against the Plaintiffs. On Issue (d) he found the Second Notice to be a valid one. He thereupon gave judgment for the Plaintiffs for possession of the said Premises on or before April 30, 1980, mesne profits at $278.60 per Mohamedan month as from September 3, 1978 and costs.

The 1st Defendant, being dissatisfied with the judgment of the learned trial judge, appealed to the High Court on the following grounds:

(i) The learned District Judge erred in law and in fact in his finding that Your Petitioner had sublet a part of the premises in 1970 to the Fourth Defendant.

(ii) The learned District Judge misdirected himself in law and in fact in holding that the evidence of the officer from the National Registration office that the Fourth Defendant's address on his identity card was changed from No. 626 North Bridge Road to No. 191 Beach Road on September 27, 1970 is capable in law of a finding that Your Petitioner had sublet the premises in 1970 to the Fourth Defendant.

(iii) The learned District Judge erred in law in his finding that Your Petitioner's tenancy was validly terminated by the Notice to Quit dated July 28, 1977.

The appeal was heard before me on July 28, 1981 when it was adjourned for Mr. Kirpal Singh, counsel for the Respondents in the Appeal, to produce to the court the Rent Conciliation Board Order in Application No. 33 of 1974 which had permitted the Respondents (Plaintiffs) to increase the monthly rent from $224.60 to $278.60. The appeal was further heard on January 21, 1982 when a photostat Order dated the 24th day of May 1974 of the Rent Conciliation Board (the Board) was produced and admitted by consent.

Firstly, Mr. Kirpal Singh contended that the First Notice (pages 51-52 of Record of Appeal) operated to terminate the contractual tenancy as between the Appellant and the Respondents and that as from February 1, 1974 the Appellant was merely a statutory tenant.

As stated by the learned trial judge (page 37F of the Record) the First Notice was required to be served under section 7(2) of the Act before the Board would or could entertain an application by a landlord for an increase in rent. It was a notice to quit not intended to terminate the tenancy, but it was a step in the process prescribed by the Act to bring about a permitted increase of rent. This is clearly borne out by the fact that the First Notice contains the offer by the Plaintiffs/Respondents which reads, "Our clients are prepared to enter into a *fresh tenancy* (emphasis mine) with you as from the 1st day of February 1974 on the same terms save that the monthly rent will be $278.60, an increase of $54.20 subject to the approval of the Rent Conciliation to whom we are applying in due course". The application to the Board was made in due course, the increase sought for was approved by the Board and the Appellant (Defendant tenant) paid the increased rent as from February 1, 1974 whereupon he became a tenant of the Plaintiffs (Respondents) under a new contract – which contained the same terms as the Agreement except for a new term, namely the authorised rent of $276.60 per Gregorian month (See *The Happy World Ltd.* v. *Estate & Trust Agencies (1927) Ltd. & Anor.*[1]; *Ng Chik Puah* v. *Chop Hoe Thong*[2]). Mr. Kirpal Singh directed my attention to Part IV of the Act which relates to Statutory Tenants as bearing out his proposition that the Appellant (Defendant) had, by virtue of the First Notice, become a statutory tenant as from February 1, 1974.

I read Part IV (sections 27 and 28) of the Act to mean that a statutory tenant of controlled premises is a person who remains in possession after the determination by any means of his tenancy and who by reason of the provisions of the Act cannot be deprived of such possession by the landlord and continues to hold the tenancy from month to month on the same terms and conditions of his original tenancy. In our case the Appellant as from February 1, 1974 was not holding the premises on the same terms as before: the most important term in a controlled tenancy, namely rent was not the same. I therefore reject counsel's contention that, as from February 1, 1974, the Appellant (Defendant) was a statutory tenant. I hold that he entered into a fresh tenancy agreement with the Appellant effective from February 1, 1974 holding on the same terms and conditions as in the said Agreement except as to rent. It follows from what I have said that, as the Premises were being held under a fresh tenancy agreement, a further valid notice had to be served on the Appellant before an action for possession could be commenced against him.

The next question to be answered in the appeal was whether the Appellant's tenancy was validly terminated by the Second Notice (Ground (iii) of Grounds of Appeal).

From the Order of the Rent Conciliation Board it is quite clear that the rent increase was based on the Gregorian Calendar of twelve months per year and not on the Mohamedan Calendar of thirteen months per year. It therefore follows from this that the Plaintiffs (Respondents) were collecting from the 1st Defendant (Appellant) every Mohamedan month a sum in excess of the permitted rent under the said Order of the Board.

It is perfectly in order for a landlord and tenant to agree, on the first letting of a controlled premises, that such letting shall be on the basis of the Mohamedan Calendar but it is not permissible for such a landlord, who has obtained from the Rent Conciliation Board a fixed monthly increase based on the Gregorian Calendar in respect of capital expenditure incurred on the premises, such as sewerage works or road making charges, to latch on the permitted increase to a Mohamedan month. The effect of such action is that the landlord thereby obtains unlawfully an extra month's increase of rent and is liable to be prosecuted under section 3 read with section 5 of the Act. So that the effect in the instant case, was that the Respondents, from the effective date of the Order, namely February 1, 1974 were collecting from the Appellant the sum of $54.20 unlawfully every year. In my view the monthly rent payable to the Respondents would have to be adjusted before they can properly commence possession proceedings under the Act against the Appellant. I hold that the Second Notice which is tainted with this illegality cannot be availed of as a necessary step in the action for possession. *Koh Chee Chong* v. *Chop Fook On*[3].

A further point was raised by Mr. Kirpal Singh that it was a condition of the tenancy that the 1st Defendant would not sublet the premises or any part thereof without the written consent of the landlords first obtained, which consent had not been obtained. He contended that as the Appellant had brought himself within the forfeiture provisions of the Agreement by reason of his breach of the condition not to sublet there was no need for a notice to quit to be served on the Appellant before possession proceedings were commenced against him. Under section 14 of the Act no order or judgment for the recovery of possession of controlled premises shall be made except in cases set out in sections 15 and 16 of the Act. On the facts of the instant case an order or judgment for the recovery of possession of the Premises could only have been made under section 15(1)(b) of the Act, which reads:

"Where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under the provisions of this Act) so far as the obligation is consistent with the provisions of this Act, has been broken or not performed by the tenant and *the court considers it reasonable that such an order or judgment be made or given;*" (emphasis is mine).

Here again, as in all the other sub-sections, a valid notice to quit has to be served under section 17(2) of the Act before the court will make an order or judgment for recovery of possession and it will also be noted that under section 15(1)(b) such an order or judgment can only be

made if "the court considers it reasonable that such an order or judgment be made or given". In paragraph 19 of his judgment (Page 43 of the Record) the learned trial judge says, " . . . having regard to the penultimate paragraph of the tenancy agreement wherein the tenant covenanted that 'if I commit any breach of the conditions above mentioned I shall be deemed to have offered to surrender the premises and the landlords may forthwith enter upon the premises', I do not see any valid defence to the claim in view of my finding that the Respondent has in fact committed a breach". It seems to me therefore that the learned trial judge gave judgment for recovery of possession under section 15(1)(b) of the Act. However, there was no declaration or finding as to the court considering it to be reasonable that such order or judgment be made or given as required by section 15(1)(b). No evidence other than this sub-letting had been led before the learned trial judge which was directed to the question of reasonableness. There was, therefore, nothing before him to which he could have directed his mind before giving his decision. See *K.S. Awari* v. *Lee Ling Neo*[4], *Cherian Varughese* v. *Aminah Radin Osman*[5]. This being so, on this count alone the judgment of the lower court cannot be supported and must be set aside.

When the appeal was further argued on the second day an examination of the Order of the Rent Conciliation Board together with the Agreement made it quite apparent that the Plaintiffs (Respondents) have been unlawfully collecting from February 1, 1974 for the last eight years rent in respect of the Premises in excess of the rent fixed by an Order of the Board. This being so the Plaintiffs (Respondents) have contravened the provisions of section 3 of the Act and are liable to penalties under section 5 thereof. Plaintiffs are now seeking the assistance of the court in the recovery of possession of the Premises. I do not see how the court can assist them in these circumstances. For this reason too the Respondents' (Plaintiffs) claim for possession in the first instance could not have been acceded to.

For these reasons I allowed the appeal and ordered costs against the Respondents here and below.

Appeal Allowed.

Solicitors: *J.B. Jeyaretnam & Co.; Kirpal Singh & Co.*

ZAHRIN BIN RABU v. YING TAI PLASTIC & METAL MANUFACTURING (S) PTE. LTD.

[O.C.J. (Rajah J.) May 27, 1982]
[Singapore – Suit No. 3857 of 1981]

Workmen's Compensation – Injury in the course of employment – Alleged application for compensation under Workmen's Compensation Act – Whether defendant precluded from claiming under common law – Workmen's Compensation Act, 1975, s. 33(1) & (2).

Workmen's Compensation – Application for compensation under Workmen's Compensation Act can be withdrawn.

The plaintiff lost four fingers of his right hand as a result of an accident in the course of his employment. Subsequently, he received a letter from the Commissioner of Labour which enclosed a document similar to Exhibit P2 and the document Exhibit P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On". The plaintiff went to the Commissioner's office on July 7, 1981. He claimed that he did not know what the contents of Exhibits P2 and P3 were. The plaintiff was illiterate both in Malay and English.

Held: (1) in the absence of the Workmen's Compensation Act expressly declaring that an application to the Commissioner for compensation under the provisions of the said Act *ipso facto* abrogates a workman's common law rights for damages, a workman's unilateral voluntary application for compensation under the Act can in the same way voluntarily and unilaterally be withdrawn by the workman thus enabling him to proceed and so maintain his action for damages in any court;

(2) in the present case no Order for compensation had been made by the Commissioner. The plaintiff may therefore proceed with the action under common law.

Case referred to:

(1) *Leach* v. *R.* [1912] A.C. 305

CIVIL SUIT.

S. B. Shah (*P. T. Seah* with him) for the plaintiff.
Karuppan Chettiar for the defendants.

Cur. Adv. Vult.

Rajah J.: On October 24, 1964, the Defendants, who carry on the business of manufacturing plastic products for the electronic industry, employed the Plaintiff, Zahrin bin Rabu, born on October 24, 1964, sometime in January 1981 as a machine operator. He is illiterate both in Malay and English. On May 23, 1981 the Plaintiff, in the course of and arising out of his employment met with an accident as a result of which he lost four fingers of his right hand. He reported the accident to his office, and was admitted to the Singapore General Hospital where he was treated for his injuries. Some time after he left the hospital and while at home he received a letter from the Commissioner of Labour which had enclosed in it a document similar to Exhibit P2 and the document Exhibit P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25/5/81 inserted against "Accident On". He went to the Commissioner's office some four or five days after receipt of the letter, but before he did so he returned to work with the Defendants. He did not speak to any one at his employers' office about the letter. He says that when he went to the Commissioner's office on July 7, 1981 he did not know what the contents of Exhibit P2 and Exhibit P3 were. He further says that at the office of the Commissioner no one interpreted or explained P2 or P3 to him and that he affixed his right thumb print to Exhibit P3 in the belief that he was acknowledging the receipt of the Commissioner's letter to him. Although he was closely cross-examined by counsel on this he was not shaken and there is no other evidence before me to the contrary. It is not in dispute that both the blue ink and rubber stamp insertions were carried out at the Commissioner's office by one or more of its officers. No evidence was called to contradict the Plaintiff although he had indicated to the Defendants in his Amended Reply re-filed on May 6, 1982, the nature of his evidence. Exhibit P3, as it now stands, reads:

'NWCR 7353/81
Commissioner for Labour
Accident on 25/5/81 July 8, 1981

I, Zahrin bin Rabu (I/C No.: 1717481 I Date of Birth: 24/10/64) residing at 3 Lorong Lihat, Singapore 2470 wish to claim com-